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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,033	07/10/2001	Jeffrey Boulter	85804-019501 (01-9774)	9894
76058 7590 12/28/2007 YAHOO! INC. C/O GREENBERG TRAURIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER DENNISON, JERRY B	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/903,033

Applicant(s)

BOULTER ET AL.

Examiner

J. Bret Dennison

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This Action is in response to Application Number 09/903,033 received on 10/25/2006.
2. Claims 1-42 are presented for examination.

#### ***Claim Objections***

3. Claim 2 is objected to because of the following informalities: Claim 2 recites, "A method for providing a data stream according to preferences of a community as set forth in Claim 1", which appears to include a minor typographical error. Examiner suggests amending the claim to recite, "The method for providing...as set forth in Claim 1" to remain consistent with the rest of the claims, as well as to avoid any possible antecedent basis issues. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-9, 11-17, 19-25, 27-31, 33-37, and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shands ("An Exclusive Interview with Michael Weiss, TuneTo.com", April 14, 2000) in view of Alvear ("Q&A with Tim Bratton, President of TuneTo.com", November 23, 1999).

5. Regarding claim 1, Shands disclosed a method for providing a data stream according to preferences of a community (Shands, page 2, 1<sup>st</sup> paragraph, "community-based affinity stations playing more of the music [users] want to hear"), the steps comprising:

providing a first community having members (Shands, page 2, 1<sup>st</sup> paragraph, "community-based affinity stations"), each member of the first community having associated preferences regarding data stream content (Shands, page 2, 2<sup>nd</sup> paragraph, page 5, 2<sup>nd</sup> paragraph, Shands disclosed each person provides "thumbs up" and "thumbs down", and the system learns the users preferences to lead them to the proper channel of music based on these preferences, the proper channel clearly being one of the "community-based affinity stations"), the members of said first community are determined to have at least one preference in common (Shands, page 2, Shands disclosed users are led towards a specific channel of music according to their preferences, thereby multiple users that are led into the same channel make up a community having at least one common preference, i.e. "community-based affinity stations"); and

determining characteristics of said first community members' preferences to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands

disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state selecting content for inclusion in an individual data stream according to said determined characteristics, said individual data stream being biased according to said first community members' preferences. In other words, Shands did not explicitly state how the **new releases** are provided to the users.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind the times, trapped listening to the same songs over and over, but are "exposed" to the new music as well (see Shands, page 2, paragraph 2, "exposes you to new music"). The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the entire purpose

of the TuneTo.com system. Therefore, in the least, it would have been obvious to one of ordinary skill in the art at the time the invention was made to insert the new releases into channels that have the same characteristics as the new releases to obtain the predictable results of providing the new music to the fans that want to hear it.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

6. Regarding claim 6, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

providing a second community having at least as many members as a first community (Shands, page 2, paragraph 2, Shands disclosed a community of members using the TuneTo.com system, each member being part of a smaller community, i.e. a channel, page 2, paragraph 1, "community-based affinity stations"), each member of said second community having associated preferences regarding data stream content (Shands, page 2, paragraph 2, Shands disclosed the members are led to more finely tuned channels based on their preferences, therefore multiple members with the same music preference are part of the same community channel);

evaluating said preferences of said second community (Shands, page 2, paragraph 2, Shands disclosed learning the preferences of members of the system, and leading members of its overall community into channels based on their preferences, therefore requiring evaluation of all users' preferences); and

determining said first community from said second community, members of said first community comprising members of said second community determined to have at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed that members are led to channels based on their user preferences, therefore multiple members of the larger community (i.e. the entire TuneTo.com community) having the same preferences are led to the same community channel);

determining characteristics of preferences of said first community to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics);

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream according to said determined characteristics, said individual data stream being biased according to said determined characteristics, and said individual data stream being biased for positive preferences of said first community members and biased against negative preferences of said first community members; and

transmitting said individual data stream on a voluntary or selectable basis to allow an individual to receive said individual data stream on a voluntary or selectable basis.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for



Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

7. Regarding claim 7, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

providing a first community having members, said first community being dynamically self-defining by means of preferences associated with each member of said first community regarding data stream content (Shands, page 2, 2<sup>nd</sup> paragraph, Each person provides "thumbs up" and "thumbs down", and the system learns the users preferences to lead them to the proper channel of music based on these preferences, therefore as a users preferences changes, the system dynamically leads them to the perfect channel), said first community comprising members determined to have at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed users are led towards a specific channel of music according to their preferences, thereby multiple users that are led into the same channel make up a community having at least one common preference);

determining characteristics of said first community members' preferences to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics); and

repeating said providing, determining steps to re-establish said first community, and to re-establish said preferences and determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream according to said determined characteristics, said individual data stream being biased according to said first community members' preferences and repeating said defining selecting steps to select content for inclusion in said individual data stream.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of

ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in

the art to combine the teachings of these references since both references teach the exact same invention.

8. Regarding claim 14, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

providing a first community having members, said first community being dynamically self-defining by means of preferences associated with each member of said first community regarding data stream content (Shands, page 2, 2<sup>nd</sup> paragraph, Each person provides "thumbs up" and "thumbs down", and the system learns the users preferences to lead them to the proper channel of music based on these preferences, therefore as a users preferences changes, the system dynamically leads them to the perfect channel);

providing a second community having at least as many members as said first community (Shands, page 2, paragraph 2, Shands disclosed a community of members using the TuneTo.com system, each member being part of a smaller community, i.e. a channel, page 2, paragraph 1, "community-based affinity stations"), each member of said second community having associated preferences regarding data stream content (Shands, page 2, paragraph 2, Shands disclosed the members are led to more finely tuned channels based on their preferences, therefore multiple members with the same music preference are part of the same community channel);

evaluating said second preferences of said second community (Shands, page 2, paragraph 2, Shands disclosed leading members of its overall community into channels

based on their preferences, therefore requiring evaluation of all users' preferences); and determining said first community from said second community, members of said first community comprising members of said second community determined to have at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed that members are led to channels based on their user preferences, therefore multiple members having the same preferences are led to the same channel);

determining characteristics of said first community members' preferences to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics); and

repeating said steps of providing said first community and determining characteristics to provide said determined characteristics, in order to re-establish said first community and to re-establish said preferences and determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream according to said determined characteristics, said individual data stream being biased for positive preferences of said first community members and biased against negative preferences of said first community members;

transmitting said individual data stream on a voluntary or selectable basis thereby allowing an individual to receive said individual data stream on a voluntary or selectable basis and repeating defining said individual data stream including said selecting content for inclusion in said individual data stream, to select content for inclusion in said individual data stream.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of

the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in



the art to combine the teachings of these references since both references teach the exact same invention.

9. Regarding claim 15, Shands disclosed method for providing a data stream according to preferences of a community, the steps comprising:

providing a first community having members, said first community being dynamically self-defining by means of preferences associated with each member of said first community regarding data stream content (Shands, page 2, 2<sup>nd</sup> paragraph, Each person provides "thumbs up" and "thumbs down", and the system learns the users preferences to lead them to the proper channel of music based on these preferences, therefore as a users preferences changes, the system dynamically leads them to the perfect channel), said first community comprising members determined to have at least one preference in common (Shands, page 2, Shands disclosed users are led towards a specific channel of music according to their preferences, thereby multiple users that are led into the same channel make up a community having at least one common preference);

determining characteristics of said first community members' preferences to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics);

receiving preferences from a first user (Shands, page 2, paragraph 2, Shands disclosed that the "Smart Tuner learns your preferences based on you providing such

preferences such as thumbs up or thumbs down ratings on artists); and

transmitting an individual data stream to said first user, including content highly rated by said first user according to said preferences of said first user (Shands, page 2, paragraph 2, Shands disclosed providing a channel that is finely tuned to your preferences that plays more of the music you want to hear).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said individual data stream according to said determined characteristics, said individual data stream being biased according to said first community members' preferences.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for

Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

10. Regarding claim 22, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

providing a first community having members, said first community being dynamically self-defining by means of preferences associated with each member of said first community regarding data stream content (Shands, page 2, 2<sup>nd</sup> paragraph, Each person provides "thumbs up" and "thumbs down", and the system learns the users preferences to lead them to the proper channel of music based on these preferences, therefore as a users preferences changes, the system dynamically leads them to the perfect channel);

providing a second community having at least as many members as said first community (Shands, page 2, paragraph 2, Shands disclosed a community of members using the TuneTo.com system, each member being part of a smaller community, i.e. a channel, page 2, paragraph 1, "community-based affinity stations"), each member of said second community having associated preferences regarding data stream content (Shands, page 2, paragraph 2, Shands disclosed the members are led to more finely tuned channels based on their preferences, therefore multiple members with the same music preference are part of the same community channel);

evaluating said second preferences of said second community (Shands, page 2, paragraph 2, Shands disclosed leading members of its overall community into channels based on their preferences, therefore requiring evaluation of all users' preferences); and determining said first community from said second community, members of said first

community comprising members of said second community determined to have at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed that members are led to channels based on their user preferences, therefore multiple members having the same preferences are led to the same channel);

determining characteristics of said first community members' preferences to provide determined characteristics (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics);

receiving preferences from a first user (Shands, page 2, paragraph 2, Shands disclosed members provide user preferences such as thumbs down on artists); and

repeating said steps of providing said first community, determining characteristics to provide said determined characteristics in order to re-establish said first community, to re-establish said preferences and determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which new releases you will hear (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream according to said determined characteristics and according to said preferences of said first user, said individual data stream being biased for positive preferences of said first community members and biased against negative preferences of said first community members, and said individual data stream being biased according to said preferences of said first user;

transmitting said individual data stream to said first user, including content highly rated by said first user according to said preferences of said first user, said individual data stream transmitted on a voluntary or selectable basis to allow said first user to receive said individual data stream on a voluntary or selectable basis; and repeating said step defining said individual data stream including said selecting content for inclusion in said individual data stream, and transmitting said individual data stream to select content for inclusion in said individual data stream.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for

Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of

the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

11. Regarding claim 23, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

repeatedly receiving preferences from receivers of data stream content of a music- related database including songs and/or music videos (Shands, page 2, paragraph 2, Shands disclosed members can provide preferences while they hear music, clearly allowing them to repeatedly provide preferences throughout the use of the system; As they hear a song they can provide a thumbs up or thumbs down, thereby in the least being able to provide preferences for each song they hear);

repeatedly determining a first community of receivers from said received preferences to allow said first community to evolves over time, said first community having similar preferences for similar data stream content (Shands, page 2, paragraph 2, Shands disclosed as users provide preferences, the system learns the type of music they like; paragraph 1, Shands disclosed creating "community-based affinity stations" clearly based on the users' preferences; As users preferences change, such would cause the community preferences to evolve; The fact that they are "community-based



stations" clearly shows that they have similar preferences);

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state repeatedly determining characteristics solely of said received preferences of said first community to provide determined characteristics; and

defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music-related database according to said determined characteristics, said individual data stream being biased according to said received preferences of said first community, said individual data stream having more content that said first community likes and less content that said first community dislikes without analysis of said data stream content, and both said first community and said determined characteristics are permitted to change over time according to said received preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out

with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. Therefore repeatedly determining where new releases must go must also include repeatedly determining characteristics of each community channel. As such, the

channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

12. Regarding claim 28, Shands disclosed a method for providing a data stream according to preferences of a community, the steps comprising:

repeatedly receiving preferences of a first community having a plurality of members, said first preferences regarding data stream content of a first music-related database including songs and/or music videos (Shands, page 2, paragraph 2, Shands disclosed members can provide preferences while they hear music, clearly allowing them to repeatedly provide preferences throughout the use of the system; As they hear a song they can provide a thumbs up or thumbs down, thereby in the least being able to provide preferences for each song they hear);

repeatedly receiving preferences of a second community, said second community having at least as many members as said first community, said received

preferences regarding data stream content of said music-related database (Shands, page 2, paragraph 2, Shands disclosed a community of members using the TuneTo.com system, each member being part of a smaller community, i.e. a channel, page 2, paragraph 1, "community-based affinity stations" each member providing preferences regarding music they like);

evaluating said received preferences of said second community to provide evaluated preferences (Shands, page 2, paragraph 2, Shands disclosed leading members of its overall community into channels based on their preferences, therefore requiring evaluation of all users' preferences);

repeatedly determining said first community from said second community by means of said evaluated preferences with members of said first community having at least one preference in common (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics);

repeatedly determining characteristics solely of said first community members' preferences with regard to said data stream content to provide determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics);

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands

disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which new releases you will hear (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music-related database according to said determined characteristics, said individual data stream being biased according to said determined characteristics, and said individual data stream being biased for positive preferences of said first community and biased against negative preferences of said first community; and

transmitting said individual data stream on a voluntary or selectable basis to allow an individual to receive said individual data stream on a voluntary or selectable basis, said individual data stream having more content that said first community likes and less content that said first community dislikes without resort to analysis of said data stream content, and both said first community and said determined characteristics are permitted to change over time according to, respectively, said preferences of said second community and said preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of

ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly

selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

13. Regarding claim 29, Shands disclosed a computer-implemented method for providing a data stream according to preferences of a community, the steps comprising:

repeatedly receiving preferences from receivers of data stream content of a music-related database including songs and/or music videos (Shands, page 2, paragraph 2, Shands disclosed members can provide preferences while they hear music, clearly allowing them to repeatedly provide preferences throughout the use of the system; As they hear a song they can provide a thumbs up or thumbs down, thereby in the least being able to provide preferences for each song they hear);

repeatedly determining a first community of receivers from said received preferences, said first community having similar preferences for similar data stream content (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics);

repeatedly determining characteristics solely of said received preferences of said

first community to provide determined characteristics (Shands, page 2, paragraph 2, Shands disclosed as users provide preferences, the system learns the type of music they like; paragraph 1, Shands disclosed creating "community-based affinity stations" clearly based on the users' preferences; As users preferences change, the system learns what type of music to provide to them based on the user prefs).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which new releases you will hear (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music-related database according to said determined characteristics, said individual data stream being biased according to said received preferences of said first community, said individual data stream having more content that said evolving first community likes and less content that said first community dislikes without analysis of said data stream content, and both said first community and said determined characteristics are permitted to change over time according to said received preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their



preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system. Therefore, as new releases are added to the channels based on the characteristics, the members of those channels hear more music that they want to hear.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music

must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. Therefore repeatedly determining where new releases must go must also include repeatedly determining characteristics of each community channel. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

14. Regarding claim 34, Shands disclosed a computer-implemented method for providing a data stream according to preferences of a community, the steps comprising:

repeatedly receiving preferences of a first community having a plurality of members, said preferences regarding data stream content of a music-related database including songs and/or music videos (Shands, page 2, paragraph 2, Shands disclosed members can provide preferences while they hear music, clearly allowing them to repeatedly provide preferences throughout the use of the system; As they hear a song

they can provide a thumbs up or thumbs down, thereby in the least being able to provide preferences for each song they hear);

repeatedly receiving preferences of a second community, said second community having at least as many members as said first community, said received preferences regarding data stream content of said music-related database (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users, in order to provide those characteristics; The system providing the music on each channel requires a database of such music in order to provide it);

evaluating said preferences of said second community to provide evaluated second preferences (Shands, page 2, paragraph 2, Shands disclosed leading members of its overall community into channels based on their preferences, therefore requiring evaluation of all users' preferences);

repeatedly determining said first community from said second community by means of said evaluated second preferences, members of said first community comprising members of said second community determined to have at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics; The members of one community channel are also members of the entire TuneTo.com community);

repeatedly determining characteristics solely of said first community members'

preferences with regard to said data stream content to provide determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics and providing the content that matches the changing preferences);

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music-related database according to said determined characteristics, said individual data stream being biased according to said determined characteristics, and said individual data stream being biased for positive preferences of said first community and biased against negative preferences of said first community; and

transmitting said individual data stream on a voluntary or selectable basis to allow an individual to receive said individual data stream on a voluntary or selectable basis, said individual data stream having more content that said first community likes and less content that said first community dislikes without resort to analysis of said data stream content, and both said first community and said determined characteristics are

permitted to change over time according to, respectively, said preferences of said second community and said preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the**

**favorite bands you already like"** (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

15. Regarding claim 35, Shands disclosed a computer system for providing transmission of a data stream according to preferences of a community, comprising:

a server located in a first location (Shands, page 2, paragraph 2, Shands disclosed TuneTo.com providing the channels to its members, which clearly requires a server to serve the channels as well as to provide the TuneTo.com website), said server repeatedly receiving preferences from users, said users being receivers of data stream

content of a music- related database including songs and/or music videos (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics; The system providing the music on each channel requires a database of such music in order to provide it);

said server repeatedly determining a first community from said received preferences, said first community having similar preferences for similar content in said first data streams (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics; The members of one community channel are also members of the entire TuneTo.com community);

said server repeatedly determining characteristics solely of said preferences of said first community with regard to said data stream content to provide determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics and providing the content that matches the changing preferences).

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably

like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state said server defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music- related database according to said determined characteristics, said individual data stream being biased according to said received preferences of said first community; said individual data stream having more content that said evolving first community likes and less content that said first community dislikes without analysis of said data stream content, and both said first community and said determined characteristics are permitted to change over time according to said preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been



obvious to one of ordinary skill that it would be placed into a channel that plays music of the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system.

In an analogous art, Alvear disclosed features of the TuneTo.com system using a metacasting server (Alvear, page 2, 3<sup>rd</sup> paragraph) including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. As such, the channels are biased according to the users' preferences.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

16. Regarding claim 41, Shands disclosed a computer system for providing a data

stream according to preferences of a community, comprising:

a server (Shands, page 2, paragraph 2, Shands disclosed TuneTo.com providing the channels to its members, which clearly requires a server to serve the channels as well as to provide the TuneTo.com website) repeatedly receiving preferences of a first community having a plurality of members, said received preferences regarding data stream content of a first music-related database including songs and/or music videos (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users to provide those characteristics; The system providing the music on each channel requires a database of such music in order to provide it);

said server repeatedly receiving preferences of a second community having a plurality of members, said second preferences regarding data stream content of said music-related database (Shands, page 2, Shands disclosed the TuneTo.com system determining characteristics from the users preferences, then finding the perfect channel for the users, in order to provide those characteristics; The system providing the music on each channel requires a database of such music in order to provide it);

said server evaluating said second preferences of said second community to provide evaluated second preferences (Shands, page 2, paragraph 2, Shands disclosed leading members of its overall community into channels based on their preferences, therefore requiring evaluation of all users' preferences);

said server repeatedly determining said first community from said second community by means of said evaluated second preferences with members of said first

community having at least one preference in common (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics; The members of one community channel have a common preference and are also members of the entire TuneTo.com community);

said server repeatedly determining characteristics solely of said first community members' preferences with regard to said data stream content to provide determined characteristics (Shands, page 2, paragraph 2, Shands disclosed that the system learns users' preferences as they provide them, therefor it constantly redefines the communities as users' preferences change, which includes re-establishing the community preferences and determined characteristics and providing the content that matches the changing preferences);

Shands also disclosed that once users are led to the channel following their preferences, and they are within the channel listening to the music they like, Shands disclosed exposing the members of the channel to new music that they would probably like. Shands also disclosed that the voting system affects which **new releases you will hear** (Shands, page 2, 2<sup>nd</sup> paragraph).

Shands did not explicitly state said server defining an individual data stream, said defining comprising selecting content for inclusion in said an individual data stream of said music- related database according to said determined characteristics,

said individual data stream being biased according to said determined

characteristics, and said individual data stream being is biased for positive preferences of said first community and biased against negative preferences of said first community; and

said server transmitting said individual data stream on a voluntary or selectable basis to allow an individual to receive said individual data stream on a voluntary or selectable basis, said individual data stream having more content that said first community likes and less content that said first community dislikes without resort to analysis of said data stream content, and both said first community and said determined characteristics are permitted to change over time according to, respectively, said preferences of said second community and said preferences of said first community.

However, it would have been obvious to one of ordinary skill that **new releases** must be included into the channels that play music that have the same characteristics in order for members of that community channel to listen to the new songs that match their preferences or characteristics. For instance, after determining a user's preferences, the system leads the user to a channel that plays Aerosmith. When Aerosmith comes out with a **new release** (as they continue to do so) it would have been obvious to one of ordinary skill in the art that this new release be inserted into the data stream of the channel that plays Aerosmith in order for the users that have the preferences for Aerosmith to be able to listen to the new release and not fall behind, trapped listening to the same songs over and over, but are "exposed" to the new music as well. The new Aerosmith song isn't randomly placed into a country channel. It would have been obvious to one of ordinary skill that it would be placed into a channel that plays music of

the same characteristics. Otherwise, the entire purpose of finding "the perfect channel" is pointless and all channels would have random music which defeats the purpose of the TuneTo.com system. Therefore, as new releases are added to the channels based on the characteristics, the members of those channels hear more music that they want to hear.

In an analogous art, Alvear disclosed features of the TuneTo.com system including creating channels that are highly targeted and highly focused, based on a community (Alvear, page 3, 2<sup>nd</sup> paragraph) in which users are placed into specific channels based on matching their profiles against other member's profiles "and then once you're part of that community **you're exposed to new music in addition to the favorite bands you already like**" (Alvear, page 3, paragraph 3). Therefore, Alvear explicitly disclosed that once a user is part of a community channel, they receive **new music based on their likes and dislikes**. In order for such to occur, this new music must be inserted into the community channel and must be done repeatedly as new releases/music comes out, and it is clearly done so based on the users' preferences. Therefore repeatedly determining where new releases must go must also include repeatedly determining characteristics of each community channel. As such, the channels are biased according to the users' preferences. Alvear also disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station (Alvear, page 3, 3<sup>rd</sup> paragraph). Radio stations are clearly selectable and users are able to voluntarily receive the signal. Therefore, the users of the TuneTo.com system

are able to selectively and voluntarily receive the data stream, as there is no requirement for them to do so.

Both Shands and Alvear provide detail explaining the functionality of the TuneTo.com system. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references since both references teach the exact same invention.

17. Regarding claims 2, 8, 16, 24, 30, and 36, Shands and Alvear disclosed the limitations as described in claims 1, 7, 15, 23, 29, and 35 including wherein said step of selecting content for inclusion in an individual data stream further comprises: selecting content for inclusion in an individual data stream according to said determined characteristics (Shands, page 2, 2nd paragraph, Shands disclosed that once users are within the channel that fits their preferences, the system “exposes you to new music that you would probably like” requiring the channel to be updated with this new music), said individual data stream being biased for positive preferences of said community and biased against negative preferences of said community (Shands, page 2, 2<sup>nd</sup> paragraph, Shands disclosed the users giving positive preferences, “thumbs up” and negative preferences, “thumbs down” which lead the user to a specific channel, this specific channel is clearly updated with the “new music” that the users “would probably like” ; Alvear, page 3, 3<sup>rd</sup> paragraph, Alvear disclosed that once you are part of a community channel, you are exposed to new music in addition to the favorite bands you already said you like). See motivation above.

18. Regarding claims 3, 9, 17, 25, 31, and 37 Shands and Alvear disclosed the limitations of claims 1, 7, 15, 23, 29, including wherein said step of providing a first community further comprises:

providing a second community having at least as many members as said first community, each member of said second community having associated preferences regarding data stream content (Alvear, page 3 3<sup>rd</sup> paragraph, The users in all of channels together make up the TuneTo.com entire community of listeners, each of which having their own preferences);

evaluating said preferences of said second community (Alvear, page 3, 3<sup>rd</sup> paragraph, Alvear disclosed evaluating users preferences to determine what channel they should be led to); and

determining said first community from said second community, members of said first community comprising members of said second community determined to have at least one preference in common (Alvear, page 3, 3<sup>rd</sup> paragraph, "community-based channels" required determining many communities from the entire community, the community based channels being made up of users with common preferences).

Claims 25, 31 and 37 include repeatedly performing these steps. As explained in the rejection of claim 23, Shands disclosed the system learning users preferences and provides content according to those preferences. Clearly all users are able to change their preferences as they use their system, and therefore the communities would have

to evolve in order to satisfy the users' preferences. Therefore as users' preferences change, the steps would have to be performed repeatedly.

See motivation above.

19. Regarding claims 5, 11, 19, 27, 33, and 39, Shands and Alvear disclosed the limitations described in claims 1, 7, 15, 23, 29, and 35, including wherein the method further comprises: transmitting said individual data stream on a voluntary or selectable basis to allow an individual to receive said individual data stream on a voluntary or selectable basis (Alvear, page 3, 3<sup>rd</sup> paragraph, Alvear disclosed that the idea of the TuneTo.com system is that this becomes your new favorite radio station; Radio stations are clearly selectable and voluntary to receive the signal). See motivation above.

20. Regarding claims 12, 20, Shands and Alvear disclosed the limitations as described in claims 7, 15, including wherein the step of providing a first community further comprises:

providing a first community, each member of which is determined to provide an artist rating which exceeds a predetermined rating threshold (Shands, page 2, paragraph 2, Shands disclosed "If you like a song and press thumbs up, TuneTo.com will work to hook you up with channels playing more of that artist, which clearly gives that artist a rating greater than a threshold, otherwise the system would not "hook you up" with more music by that artist. The threshold of like over dislike is achieved). See motivation above.



21. Regarding claims 13, 21, Shands and Alvear disclosed the limitations as described in claims 12 and 20. As explained in the above rejection, Shands and Alvear clearly disclosed that a threshold of like over dislike is achieved.

Shands and Alvear did not explicitly state wherein the rating corresponds to a scale of 1 to 100 and the predetermined rating threshold is 70.

However, the values of the range of the scale as well as the value for the threshold are interpreted to encompass that the threshold is used to delineate between two outcomes which provides enough analysis to determine if the user likes or dislikes an artist.

The TuneTo.com system clearly provides a scale from like to dislike by using a thumbs up and thumbs down rating system that provides the system a way for determining one of two possible outcomes which are "like" and "dislike".

Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to use a range of values from 1 to 100 and determine whether to provide music based on a threshold of 70 to allow for values from 1-69 to show one outcome of "dislike" and 70-100 to shown the other outcome of "like" in order to obtain the same results that Shands provides, which is determining whether the user "likes" or "dislikes" songs, for the benefit of narrowing down the user's preferences to music that the user is interested in.

22. Regarding claims 40 and 42, Shands disclosed the computer system for

providing a data stream according to preferences of a community as set forth in claims 35.

Shands did not explicitly state wherein said server being in said first location and at least one of said users being in a second location, said second location being a different country than said first location.

However, TuneTo.com's music database is internet-based (i.e. TuneTo.com is clearly a website). It is well known in the art that there are no restrictions as to the location of the users in order to access Internet websites. As such, it does not matter what country each member is located. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that users having Internet access could be located in any country, since TuneTo.com is clearly a website on the World Wide Web, in order to provide users with the perfect music channel no matter what their location is.

23. Claims 4, 10, 18, 26, 32, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shands and Alvear as applied to claim 1 above, and further in view of Smotroff ("TuneTo.com Seals \$2.6 Million Series A Funding", January 18, 2000).

24. Regarding claims 4, 10, 18, 26, 32, and 38, Shands and Alvear disclosed the limitations described in claims 1, 7, 15, 23, 29, and 35. Shands and Alvear did not explicitly state wherein the step of selecting content for inclusion in an individual data

stream further comprises selecting content for inclusion in said individual data stream in accordance with sound recording performance restrictions.

In an analogous art, Smotroff disclosed that the TuneTo.com system is registered with the US Copyright office for digital transmission of music over the Internet in compliance with the Digital Millennium Copyright Act as specified by RIAA recommendations (Smotroff, page 2).

Shands, Alvear, and Smotroff all provide teachings that describe features of the TuneTo.com system. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Smotroff with Shands and Alvear in order to obtain the predictable results of the TuneTo.com system.

### ***Response to Arguments***

Applicant's arguments and amendments filed on 9/04/2007 have been carefully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new grounds of rejection, necessitated by Applicant's amendment (*i.e., by incorporating new limitations into the independent claims, which will require further search and consideration*) to the claims which significantly affected the scope thereof.

Applicant's assumptions regarding the withdrawn 102(e) rejection (provided in the Office Action mailed 1/16/2007) are correct. The only withstanding rejections for this case are currently provided within this Office Action.

The Applicant argues that the articles describing the TuneTo.com system do not provide an enabling disclosure [See Applicant's Response, page 27, 2<sup>nd</sup> paragraph].

A reference contains an "enabling disclosure" if the public was in possession of the claimed invention before the date of invention. See MPEP 2121.01 and *In re Donohue*, 766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985).

This disclosure within the articles of Shands, Konig, Alvear, and Smotroff shows that the public was in possession of the claimed invention before the date of invention, establishing a *prima facie* case of public possession before the date of invention.

The references clearly indicate that public had possession of the TuneTo.com website before the date of invention of the instant application. Specifically, the invention disclosed in the articles of Shands, Konig, Alvear, and Smotroff was able to be transferred to a computer operated by the public from a publicly posted and available Web site thereby showing that this invention was enabled by this public possession of the invention, establishing a *prima facie* case of public possession before the date of invention. For example, Shands disclosed, "Now, as of mid-November, we have our TuneTo.com website where you can actually "Tune To" your favorite radio station by matching your preferences with the thousands of channels we broadcast" (See Shands, page 4, 4<sup>th</sup> paragraph).

Applicant argues, "none of the references teach, suggest or disclose defining an individual data stream for a community by selecting content for inclusion in the individual data stream according to determined characteristics of a member

community's preferences regarding data stream content, and/or selecting the content in accordance with characteristics of preferences of a community whose members are determined to have at least one preference in common" [See Applicant's Response, page 27, last paragraph].

Examiner respectfully disagrees.

Applicant explains that the TuneTo.com system "focuses on matching a user to a set of pre-existing channels, without reference to how content for a channel is defined" [See Applicant's Response, page 28, last paragraph].

Examiner agrees with Applicant that the TuneTo.com system sets a user up with a channel that follows the user's preferences. As the user continues to provide feedback, the TuneTo.com system leads the user to the channel that meets the user's needs. Therefore, a group of users having the same preferences would ultimately end up in the same channel. Examiner agrees that this channel is "pre-existing". A user cannot be put into a channel that does not exist. However Examiner does not agree with Applicant regarding how content for a channel is defined.

As shown in the above rejection, Shands disclosed that the TuneTo.com system provides **new releases** (Shands, page 2, 2<sup>nd</sup> paragraph; "This voting system also affects which new releases you will hear by matching the new music to fit your musical taste or preference). Clearly these new releases must be added to a channel based on determined characteristics, i.e. a new release is added to a specific channel based on if the new release matches the type of music being played on that channel. Otherwise, there would be no point of creating these highly targeted channels in the first place. If a

user provides preferences that land him/her into, for example, an alternative rock channel, and a new alternative rock band comes out with a new release, it is clear that the TuneTo.com system would insert that new release into the alternative rock channel. The new release is put into that specific channel for two reasons:

1) to expose the TuneTo.com users of that channel to new music that they would probably like (See Shands, page 2, Section 2);

2) the purpose of the multiple channels is to differentiate the type of music per channel to satisfy the group of users who are interested in that type of music.

Therefore, it is clear that new content must be matched to characteristics of a channel to fit the user's musical taste or preference.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,438,579 to Hosken disclosed biasing a data stream according to a group of users and providing it to the group of users.

US 7,167,895 to Connelly disclosed choosing content based on ratings received from clients.

US 6,088,722 to Herz et al. disclosed choosing content based on characteristics related to the members.

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Bret Dennison  
Patent Examiner  
Art Unit 2143